

AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE MARCH 6, 2003

SENATE BILL

No. 113

Introduced by Senator Ackerman

February 3, 2003

An act to amend Section 1281.5 of the Code of Civil Procedure, relating to mechanic's liens.

LEGISLATIVE COUNSEL'S DIGEST

SB 113, as amended, Ackerman. Mechanic's liens.

Existing law provides that any person who records and enforces a mechanic's lien does not waive any right of arbitration if the claimant, in filing an action to enforce the lien, simultaneously presents an application to the court to stay the action pending arbitration, as specified.

This bill would revise that provision to *instead* apply if the claimant ~~demands~~ *either (1) includes an allegation in the complaint that the claimant does not intend to waive any right of arbitration and intends to move, within 30 days after service of the summons and complaint, for an order to stay further proceedings in the action, or (2) files an application, at the same time the complaint is filed, that the action be stayed, rather than presents an application to the court pending arbitration. The bill would also require the claimant to file and serve a motion to stay the action pending the arbitration of any issue, question, or dispute that is claimed to be arbitrable under the agreement and that is relevant to the action to enforce the claim of lien. The bill would provide that the action is automatically stayed on filing of the*

~~complaint, and that any party may file a motion for relief from the stay also make technical changes.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1281.5 of the Code of Civil Procedure
2 ~~is amended to read:~~

3 ~~1281.5. (a) Any person who proceeds to record and enforce~~
4 ~~a claim of lien by commencement of an action pursuant to Title 15~~
5 ~~(commencing with Section 3082) of Part 4 of Division 3 of the~~
6 ~~Civil Code, shall not thereby waive any right of arbitration which~~
7 ~~that person may have pursuant to a written agreement to arbitrate,~~
8 ~~if, in filing an action to enforce the claim of lien, the claimant~~
9 ~~demand in the complaint that the action be stayed pending the~~
10 ~~arbitration of any issue, question, or dispute which is claimed to~~
11 ~~be arbitrable under the agreement and which is relevant to the~~
12 ~~action to enforce the claim of lien. The action is automatically~~
13 ~~stayed on filing of the complaint. Any party may file a motion for~~
14 ~~relief from the stay.~~

15 ~~(b) The failure of a defendant to file a petition pursuant to~~
16 ~~Section 1281.2 at or before the time the defendant answers a~~
17 ~~complaint to enforce a claim of lien pursuant to Title 15~~
18 ~~(commencing with Section 3082) of Part 4 of Division 3 of the~~
19 ~~Civil Code waives the defendant's right to compel arbitration. is~~
20 ~~amended to read:~~

21 1281.5. (a) Any person who proceeds to record and enforce
22 a claim of lien by commencement of an action pursuant to Title 15
23 (commencing with Section 3082) of Part 4 of Division 3 of the
24 Civil Code, ~~shall~~ *does* not thereby waive any right of arbitration
25 ~~which that the~~ person may have pursuant to a written agreement
26 to arbitrate, if, in filing an action to enforce the claim of lien, the
27 claimant ~~at~~ *does either of the following:*

28 (1) *Includes an allegation in the complaint that the claimant*
29 *does not intend to waive any right of arbitration, and intends to*
30 *move the court, within 30 days after service of the summons and*
31 *complaint, for an order to stay further proceedings in the action.*

32 (2) *At the same time presents to the court that the complaint is*
33 *filed, the claimant files an application that the action be stayed*



1 pending the arbitration of any issue, question, or dispute ~~which~~
2 ~~that~~ is claimed to be arbitrable under the agreement and ~~which that~~
3 is relevant to the action to enforce the claim of lien.

4 (b) *Within 30 days after service of the summons and complaint,*
5 *the claimant shall file and serve a motion and notice of motion*
6 *pursuant to Section 1281.4 to stay the action pending the*
7 *arbitration of any issue, question, or dispute that is claimed to be*
8 *arbitrable under the agreement and that is relevant to the action*
9 *to enforce the claim of lien.*

10 (c) The failure of a defendant to file a petition pursuant to
11 Section 1281.2 at or before the time ~~he or she~~ *the defendant*
12 answers the complaint filed pursuant to subdivision (a) ~~shall~~
13 ~~constitute~~ *is a waiver of that party's the defendant's right to compel*
14 arbitration.

